IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY THE SIXTH DAY OF DECEMBER
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION No. 24284 OF 2006

Between:

M/s. Sri Vijayarama Gajapathi
Co-operative Sugars Limited,
Kumaram, Vizianagaram District.

..... PETITIONER

AND

1. The Commercial Tax Officer,
   Vizianagaram and another.

....RESPONDENTS

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O R D E R **(Per Sri Justice J.Chelameswar)**

This writ petition is filed with a prayer as follows:-

> "To quash the order of the 2nd respondent in Appeal No.VSP/018/06-07, dated 15-09-2006 confirming the assessment made by the 1st respondent for the year 2002-03 vide his order dated 14-03-2006 as illegal, arbitrary and contrary to law and consequently restrain the 1st respondent from taking any coercive steps for recovery of balance disputed tax of Rs.28,80,161/- for the assessment year 2002-03 (APGST)."

2. The petitioner is a limited company carrying on business as a manufacturer of sugar registered under A.P.G.S.T. and C.S.T. Acts with the 1st respondent-the Commercial Tax Officer, Vizianagaram. In the process of manufacturing the sugar, by product called 'Molasses' is generated, which has commercial value. For the disposal of the Molasses, generated by the petitioner's plant, during the year 2002-03, tenders were quoted by the petitioner inviting offers for purchase of the Molasses. In response to the said invitation, offers were received from intending purchasers, some of whom were residents of Andhra Pradesh State and some others are residents of other states. Eventually, the tenders were finalized, purchasers, belonging to the states other than Andhra Pradesh, became successful bidders, wherein quantities of Molasses were sold to those purchasers in terms of their offers.

3. The petitioner treated those sales as inter-State sales,

governed by the Central Sates Tax and not as the sales amenable for taxation under A.P.G.S.T. Act. Such a claim of the petitioner was not accepted by the 1st respondent vide his assessment order dated 14-03-2006.

4. Aggrieved by the same, the petitioner preferred an appeal before the 2nd respondent-The Appellate Deputy Commissioner, Visakhapatnam. The 2nd respondent dismissed the appeal by order dated 15-09-2006 holding that the claim of the petitioner that the above mentioned sales are inter-State sales cannot be accepted. Hence, the present writ petition.

5. On 22-11-2006 when the matter came up for admission, the learned Government Pleader for taxes sought time to file counter-affidavit. Accordingly, the matter was adjourned . A counter-affidavit is filed by the 1st respondent.

6. It is asserted by the petitioner that all the purchasers, referred to above, are dealers registered under the relevant sales tax Law of the State from which they carry on their business. The said purchasers issued 'C' Form under the Central Sales Tax Act and therefore, the transactions are clearly inter-State sales and not amenable to tax under the A.P.G.S.T. Act.

7. In the impugned order, the 2nd respondent recorded a finding that the sale transaction is completed in the State of Andhra Pradesh and the movement of goods is only subsequent to the sale, which fact in our view is not in dispute for deciding whether particular sale is inter-State sale or intra-State sale.

8. The 2nd respondent of-course recorded a finding that the

buyers, in fact, lifted the commodity and transported the same out of the State of Andhra Prdesh. The relevant portion of the impugned order reads as follows:

> "A reading of the above conditions would reveal that the appellant is not at all responsible with the transport of the goods to outside the State or within the State. Its job is completed in the premises of the appellant. The goods are ascertained and lifted only on payment of full consideration. The property in the goods passed to the buyers in the State of Andhra Pradesh. The buyers thereafter lifted the stocks through the transport arranged by themselves and permits obtained by themselves to outside the State. Hence, all these cases fall under case No.3 of the illustrations given by the Hon'ble Supreme Court of India in the case of Balabhagas Hulas Chand v. State of Orissal (37 STC 207)."

In coming to the conclusion, the 2nd respondent relied upon a Judgment of a Constitutional Bench of the Supreme Court in **STATE OF A.P. v. NATIONAL THERMAL POWER CORPN. LTD.,** [1]**.** At para 25 of the said Judgment, the Bench considered the issue as to what is an inter-State sale. The relevant portion of which reads as follows:-

> "It is well-settled by a catena of decisions of this Court that a sale in the course of inter-State trade has three essential ingredients: (i) there must be a contract of sale, incorporating a stipulation, express or implied, regarding inter-State movement of goods; (ii) the goods must actually move from one State to another, pursuant to such contract of sale; the sale being the proximate cause of movement; and (iii) such movement of goods must be from one State to another State where the sale concludes. It follows as a necessary corollary of these principles that a movement of goods which takes place independently of a contract of sale would not fall within the meaning of inter-State sale. In other words, if there is no contract of sale preceding the movement of goods, obviously the movement cannot be

> attributed to the contract of sale. Similarly, if the transaction of sale stands completed within the State and the movement of goods takes place thereafter, it would obviously be independently of the contract of sale and necessarily by or on behalf of the purchaser alone and, therefore, the transaction would not be having an inter-State element."

9. It can be seen from the above extracted portion of the Supreme Court's Judgment that three factors are to be examined before coming to the conclusion whether the sale is inter-State sale or intra-State sale. The first being that there must be a contract of sale wherein a condition either express or implied must exist, regarding inter-State movement of goods.

10. Admittedly there is no express contract in the present sale stipulating such a condition. But the learned counsel for the petitioner submitted that having regard to the language of the sale confirmation letter and several attendant circumstances like the recitals of the sale invoices, and the fact that the purchasers or residents of other States carrying on business as registered dealers in their respective States, as coupled with the fact that the goods did, in fact, moved out of the State of Andhra Pradesh, necessarily, an inference must be drawn that the sales are inter-State sales.

11. This aspect of the matter that whether by necessary implication of the undisputed facts, there was a contract for inter-State sale of commodity in question is not examined by either of the respondents.

12. In the circumstances, we deem it appropriate to set aside the impugned order dated 15-09-2006 and remit the matter

back to the 2nd respondent to examine this question and dispose of the appeal in accordance with law.

13. Accordingly, the Writ Petition is disposed of with the aforesaid directions. No costs.

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J.CHELAMESWAR,J

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December 06, 2006 **D.APPA RAO,J**

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[1] 127 STC 2002 PAGE 281